

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

1 RICARDO S. JUARBE-ACEVEDO,  
2 et al.,

3 Plaintiffs,

4 v.

5 UNITED STATES OF AMERICA,

6 Defendant.  
7  
8  
9

Civil No. 97-1220 (JAF)

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U.S. DISTRICT COURT  
SAN JUAN, PR

10 ORDER

11 On May 8, 2000, Defendant, the United States of America, filed  
12 a motion in limine to exclude Plaintiff Juarbe's 38 U.S.C. § 1151  
13 (1988) benefits from a potential damage award.  
14

15 After reviewing the Proposed Pre-Trial Order submitted by both  
16 parties, Docket Document No. 48, and Plaintiff's Complaint, Docket  
17 Document No. 1, we find that Plaintiff Juarbe has not included a  
18 section 1151 benefits claim in his claim for compensatory damages in  
19 the present action. Therefore, we need not decide the issue.

20 As a point of clarification, a tort case may include a claim for  
21 lost earnings if properly found in fact. Under the Federal Tort  
22 Claims Act ("FTCA"), 28 U.S.C. §§ 2671-80 (1994), state law  
23 determines the scope of liability. See 28 U.S.C. §§ 1346(b) (1993) and  
24 2674. In this case, Plaintiff, a U.S. veteran, seeks compensatory  
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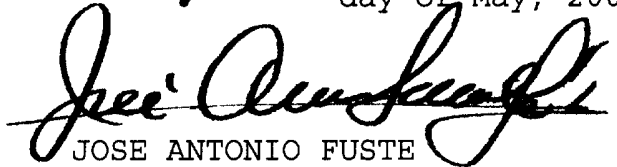
1 damages, including lost earnings, resulting from the alleged medical  
2 malpractice of a Veterans' Administration Hospital in Puerto Rico.  
3 He is also appealing the denial of section 1151 benefits in a  
4 separate administrative proceeding. The pending administrative  
5 proceeding is not inconsistent with his right to seek, in this tort  
6 action, lost earnings, unless statute or regulation proscribes it.  
7 We know of no disposition under the FTCA or Puerto Rico law which  
8 requires such exclusion.  
9

10 In accordance with the foregoing, we **DENY** Defendant's motion in  
11 limine, Docket Document No. 79.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this

*12th* day of May, 2000.

14  
15 

16 JOSE ANTONIO FUSTE  
U. S. District Judge